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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,507	07/21/2003	Jeffrey M. Siegel	22845.00	4678
7590	01/26/2006			
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215				EXAMINER BRITTAIN, JAMES R
				ART UNIT 3677 PAPER NUMBER

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/622,507	SIEGEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James R. Brittain	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Election/Restriction*

Applicant's election with traverse of Group II in the reply filed on October 27, 2005 is acknowledged. The traversal is on the ground(s) that it would not be a serious burden to examine the inventions together. This is not found persuasive because the searches are extensive for each invention and the inventions are distinct as set forth in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

Claims 5-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 27, 2005.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. §102(b) as being clearly anticipated by Radlauer (US 1912465).

Radlauer (figures 1, 2) teaches an elastic loop inherently capable of securing a bag to a trashcan comprising: a plurality of elastic strands (page 1, lines 66-69) covered by a tubular sheath of textile material. A coupler made of celluloid couples the aligned abutting ends of the elastic strands and sheath together. As indicated in claim 1 of the patent "A circlet comprising

an elastically extendible material,” (the elastic strands) “a fabric covering thereover, the ends of the material” (the elastic strands) “and covering being in substantially abutting relation”.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. §103(a) as being unpatentable over Radlauer (US 1912465) in view of Ginocchio (US 5774945).

Radlauer (figures 1, 2) teaches an elastic loop inherently capable of securing a bag to a trashcan comprising: a plurality of elastic strands (page 1, lines 66-69) covered by a tubular sheath of textile material. A coupler made of celluloid couples the aligned abutting ends of the elastic strands and sheath together. As indicated in claim 1 of the patent “A circlet comprising an elastically extendible material,” (the elastic strands) “a fabric covering thereover, the ends of the material” (the elastic strands) “and covering being in substantially abutting relation”. The difference is that the diameter of the circlet is not stated. However, Ginocchio (figures 2, 11) teaches bundling device structure in which it is taught that it is desirable to make a sheath covered elastic bundling cord, be the elastic core solid as shown in figure 11a, stranded as shown in figure 11b or tubular as shown in figure 11c wherein the number of strands are adjustable for the appropriate diameter as indicated in column 4, lines 15-21, wherein 42 strands comprise a 3/16 inch diameter cord and 76 strands comprise a ¼ inch diameter cord. It would have been obvious to modify the elastic loop of Radlauer so that the diameter is between about ¼ inch and

3/16 inch in view of Ginocchio teaching that it is well known to vary the diameter of the elastic bundling cord so as to be at the end points of the range. In regard to claim 3, it is unclear whether the elastic strands of the device of Radlauer have substantially equal circumferences. However, it would have been obvious to utilize substantially equal circumferences for the strands in view of Ginocchio (figures 2, 11b) teaching such structure to be conventional for stranded bundling cords. In regard to claim 4, it would have been further obvious to utilize a cord falling within the range from about  $\frac{1}{4}$  inch to about 3/16 inch in view of Ginocchio teaching that it is well known to vary the diameter of the elastic bundling cord so as to be at the end points of the range as indicated in column 4, lines 15-21.

*Conclusion*

The patents of Hilsinger (US 2835945, figures 3, 4), Spencer (US D353696, figures 1-4) and Gold (US 4864695, figures 2, 3) teach pertinent fastener structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB